

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs April 24, 2009

JOE E. ROGERS, JR. v. MARY K. ROGERS

**Appeal from the Circuit Court for Blount County
No. E-21127 W. Dale Young, Judge**

No. E2008-00258-COA-R3-CV - FILED JULY 30, 2009

This is a divorce case. After dissolving the parties' marriage, the trial court divided the marital estate. It declined to award Mary K. Rogers ("Wife") any statutory alimony or her attorney's fees. Wife appeals each of these three monetary determinations. We slightly modify the trial court's division of marital property. As modified, it is affirmed. Furthermore, we affirm the trial court's judgment denying Wife's request for statutory alimony and attorney's fees.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed as Modified; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and JOHN W. MCCLARTY, JJ., joined.

Charles A. Carpenter, Maryville, Tennessee, for the appellant, Mary K. Rogers.

Neill R. Monaghan, Maryville, Tennessee, for the appellee, Joe E. Rogers, Jr.

OPINION

I.

Wife and Joe E. Rogers, Jr. ("Husband") were married on February 9, 2002, after living together for six years. They separated on January 26, 2006, and Husband filed for divorce three weeks later. As can be seen, they were together in marriage for approximately four years. Their union produced no children. The trial in this case took place over the course of two days in March and July 2007. Husband, age 46, and Wife, 41, were the only witnesses. Midway through the proceedings, the court granted the parties a divorce on stipulated grounds, leaving the issues of property division and distribution, alimony, and attorney's fees to be decided.

Husband has an associate's degree in mechanical engineering. For 22 years, he worked for TVA, earning a gross yearly income of \$87,000 when this divorce action was initiated. During trial,

Husband took a new job with Progress Energy in Crystal River, Florida, earning \$7,274 gross income per month. Husband estimated his monthly expenses at \$3,900 a month.

Wife has a master's degree in rehabilitation counseling. She worked as a counselor before the marriage, earning a gross income of \$50,000 a year.¹ In December 2001, two months before the parties married, the educational requirements of her position changed so as to require a nursing degree. As a consequence, Wife was terminated. Other than during the ensuing two-month severance period, Wife did not work again outside the home during the marriage, but instead set out to obtain a nursing degree. Wife attended school and did the majority of the cleaning, cooking, and housekeeping, and cared for the couple's ten pets.

Wife had suffered for some time from chronic depression and also had attention deficit hyperactivity disorder and an anxiety disorder; she was prescribed and took medications for these conditions. Wife underwent a second reconstructive bladder surgery in 2006. She incurred various medical bills during the marriage; at the time of the divorce, her unpaid medical bills amounted to \$3,561. Husband described himself as "not in poor health" although he had had three heart attacks and open heart surgery. He had a pacemaker implanted around the time of the parties' marriage.

With the exception of Husband's TVA annuity and 401(k)², neither party brought significant assets into the marriage.³ In September 2002, in their first year of marriage, the parties purchased the marital residence in Blount County for \$200,000; Husband obtained a \$191,000 mortgage and Wife contributed \$9,000 cash from an inheritance she had received.⁴ They took out a \$25,000 line of credit against the marital property and used it to pay off over a dozen credit cards, resulting in "zero debt" in the early stage of their marriage. Before the trial concluded, the marital home was sold for \$260,000. After satisfying the first mortgage and the second mortgage equity line of credit in full, the remaining \$33,000 of the net proceeds was essentially applied to pay off Wife's two student loans totaling \$32,783.48. Husband had co-signed the loans during the marriage. The small balance remaining of the sale proceeds was paid to Wife as alimony pendente lite.⁵

In addition to the two South College loans, Wife incurred an additional \$41,323 in student loan debt during the marriage. For various reasons, Wife did not complete her degree requirements. Wife attended the University of Tennessee, but was dismissed because of failing grades which she

¹The record does not disclose where Wife worked, although there was some testimony that she was employed by the State of Tennessee directly or on a contract basis.

²Husband had a retirement annuity, contributions to which go back to his hiring by TVA in 1985. He opened a 401(k) account in 1997.

³Although both of the parties owned other properties before their marriage, these properties were sold before or soon after the marriage. The record does not indicate how the proceeds were used.

⁴The deed is not in the record, but both parties testified that the home was titled only in Husband's name. Husband testified that he alone applied for the mortgage because Wife's credit was not good.

⁵No order directing a distribution of the proceeds from the sale of the marital property appears in the record. However, both parties acknowledge a June 22, 2007, hearing on the matter and there does not appear to be any real dispute regarding the fact that the bulk of the proceeds were used to pay off Wife's student loans.

attributed to Husband's interference with her ability to use the marital computer to complete an important assignment. She left South College when she found out, after she began classes, that the nursing program was not accredited. She became seriously ill soon after starting the nursing program at Lincoln Memorial University. As a result, her scholarship was revoked and she was billed for the full tuition. At the time of the hearing, Wife had enrolled at Carson-Newman College. She anticipated completing her RN degree in one to two years. She stated that she would probably enter the work force in 2011 at \$60,000 a year. She was hopeful that her future employer would repay her student loans when she obtained a nursing job.

Husband acknowledged that the parties planned for him to be the breadwinner while Wife returned to school. Husband's enthusiasm waned, however, as she entered and left one program after another. In addition to paying her education expenses, Wife used part of the South College loan monies to repay the charges she had made on Husband's credit cards which included items she purchased for Husband.

During the marriage, Husband drove a Crown Victoria and Wife drove a Volvo. When they separated, Wife took the Volvo, but wrecked it and Husband received \$3,400 on the insurance claim. In May 2006, during the parties' separation, they negotiated, with the assistance of counsel, a temporary settlement agreement; but it was never filed. Husband said that under the agreement's terms, he agreed to buy a Toyota 4Runner for Wife, title it in her name, and repay the South College student loans for which he had co-signed. In addition, the marital home was to be sold and the proceeds divided evenly. In exchange, Wife would not seek alimony or any part of Husband's retirement accounts. Husband said that before the attorneys could reduce the agreement to writing, he purchased the Toyota, with a loan from his mother and the Volvo insurance proceeds, and delivered it to Wife. After Wife notified him that she had her student loan payments deferred and would be "renegotiating the divorce," Husband, without notice, retrieved the Toyota from Wife's apartment. When Husband returned the vehicle under a mediated agreement several months later, it had sustained accidental damage to the paint on the hood. Husband disputed any suggestion that he "gave" the Toyota to Wife. "When she totaled the vehicle, I got \$3,400. I would not have gone out and bought her a \$9,500 vehicle just out of the kindness of my heart."

Husband alleged that during the separation, the marital home was unoccupied for six months during which time it was "burglarized" and several items of personal property were taken. Husband said he suspected Wife had done the "burglarizing." He introduced an email from Wife wherein she offered to return pillows and a tool box she had removed from the home. Wife acknowledged that, after the separation, she used her key to enter the home and take certain items. Wife also admitted to spending a collection of 300 to 400 \$1 coins that belonged to Husband.

At the time of trial, Wife lived in a rented apartment with her boyfriend and was a full-time student. She said that her stepfather and boyfriend were loaning her money to live on and that she was obligated to repay them.

The trial court adopted Husband's proposed findings and conclusions of law *in toto*.⁶ The relevant portions are as follows:

The real property had already been sold and, pursuant to an order of June 22, 2007, the proceeds therefrom were disbursed: \$32,783.48 was used to payoff [Wife's] student loans and the balance of several hundred dollars was paid to [Wife] as . . . alimony pendente lite.

Most of the personal property . . . had been divided by the time of the divorce, except for a small collection of coins belonging to [Husband], which had been appropriated by [Wife], and spent by her. Additionally, after the separation . . . [Husband] bought [Wife] a Toyota 4-Runner worth approximately \$9500.00. This purchase was occasioned by [Wife] crashing . . . a Volvo which the parties had owned. [Husband] is paying his mother \$140.00 bi-weekly for the Toyota. The Court inspect some cosmetic damage to the paint . . . but no value was provided as to the cost of any repair therefor. Further, [Wife] purloined various items belonging to [Husband] after breaking in to the marital home on or about April 13, 2007. [Husband] does not seek the return of any of these items due to his concerns about their condition and cleanliness. [Husband] is entitled to a sum . . . of \$6181.82 as compensation for the value of these various items of property, and a further \$4750.00 representing half the value of the Toyota 4-Runner.

[Wife] has no retirement funds. [Husband] has considerable retirement funds These retirement funds need to be divided as part of the property settlement based on the values at the time of the marriage and the time of the divorce As of the time of the marriage, [Husband] had \$10,845.56 in his TVA 401(k) plan, and

⁶On July 17, 2007, at the conclusion of the trial, the court deferred closing arguments pending further information on Husband's retirement accounts. The information was to be supplied by Husband's counsel. The court directed the parties' counsel to submit proposed findings of fact and conclusions of law. Husband filed his proposal on October 19, 2007. On December 4, 2007, the trial court ordered that Wife's proposals were to be filed within ten days "or the Court will conclude that none will be filed. . . ." In a January 4, 2008 order, the court, first noting that Wife had filed no proposed findings and conclusions, found Husband's findings to be "true, correct and accurate in all respects" and adopted them as "equitable division of marital assets and liabilities." On January 9, 2008, Wife filed proposed findings and conclusions and, the following day, moved the court to permit the late-filing and for relief from its January 4, 2008, order. In support, Wife's counsel essentially admitted that, because of various work-related reasons, he was unaware of the ten-day deadline. On January 31, 2008, the court denied Wife relief upon finding that she was not entitled to claim excusable neglect. The court further stated, however, that it "did not disregard the testimony of the parties at trial, nor did it decide the case simply by looking at [Husband's] Findings of Fact and Conclusions of Law."

\$55,926.84⁷ in his TVARS variable fund. However, the figures for 2002 are artificially low as a result of a decrease in share prices following the atrocities committed on September 11, 2001. [Husband's] actual contributions to the plans as of February 9, 2002 were \$26,830.11. The TVARS and the 401(k) were rolled over into one (1) account when [Husband] began his new employment [Its] value at the time of the divorce was \$199,541.96. The parties were married for five (5) years. [Husband] had been contributing to his retirement funds for twenty-two (22) years. [Wife] is therefore prima facie entitled to an equitable coveture fraction of fifty percent (50%) of 5/22 of the retirement at the time of the divorce. This amount is \$22,675.22. [Wife] would be awarded that amount less \$6,181.22 compensation for property she moved in the burglary of April 13, 2007, i.e[.], she would be awarded \$16,494.00, but she shall also be responsible for the totality of her student loans paid from the equity in the house in the sum of \$16,391.74 (\$32,782.48/2) and half the value of the Toyota 4-Runner in the sum of \$4,750.00. She dissipated the marital estate by taking out substantial student loans for educational course, which she failed to complete for what the Court finds were spurious and specious reasons. Therefore, [Husband] is awarded \$4,647.74 as his share of the marital property.

After distributing the marital assets and liabilities pursuant to its findings, the trial court denied Wife's request for alimony of any type and ordered each party to pay the party's debts that were in the party's name, expressly noting Wife's responsibility for "her outstanding or continuing medical bills and student loans." Each party was ordered to pay their own attorney's fees. Court costs were divided equally. Wife timely appealed.

II.

We restate the issues raised by Wife and address them in the following order:

1. The trial court erred in its classification and distribution of the marital assets.
2. The trial court erred in denying Wife alimony.
3. The trial court erred in denying Wife an award of attorney's fees.⁸

⁷Both the trial testimony and an exhibit reflect the account having a balance of \$56,782.13 at the time of the marriage.

⁸In the final sentence of the "Conclusion" section of his brief, Husband seeks an award of court costs and attorney's fees on appeal. Because Husband failed to raise this "issue" in the "Statement of the Issues Presented for
(continued...)

III.

Our review of the trial court's findings of fact is de novo upon the record of the proceedings below, accompanied by a presumption of correctness, a presumption we must honor unless the preponderance of the evidence is against those findings. Tenn. R. App. P. 13(d); *Wright v. City of Knoxville*, 898 S.W.2d 177, 181 (Tenn. 1995); *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). There is no presumption of correctness as to the trial court's conclusions of law. *Kendrick v. Shoemaker*, 90 S.W.3d 566, 569 (Tenn. 2002); *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996).

The issues raised on appeal involve subjects addressed to the sound discretion of the trial court. *Batson v. Batson*, 769 S.W.2d 849, 850 (Tenn. Ct. App. 1988); *Fisher v. Fisher*, 648 S.W.2d 244, 246 (Tenn. 1983); *Aaron v. Aaron*, 909 S.W.2d 408, 410 (Tenn. 1995). “An appellate court should find an abuse of discretion when it appears that a trial court applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining.” *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997) (citing *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn. 1996)). On review of the trial court’s discretionary functions, the appellate court looks, among other things, to see whether the evidence preponderates against the court’s factual findings in support of its decisions.

IV.

A.

Wife contends that the trial court erred in its valuation, classification and distribution of the marital property in nearly every aspect – regarding Husband’s retirement account, Wife’s student loans, the Toyota, and certain personal property. More specifically, she asserts that the trial court erroneously determined the value of the marital portion of the retirement account and then improperly assigned to her, alone, the responsibility for other marital purchases so that, by Wife’s calculations, she ultimately received a negative net award from the marital estate.

B.

In dividing a divorcing couple's property, the trial court’s first item of business is to identify and distribute the separate property, if any, to each party. *See Anderton v. Anderton*, 988 S.W.2d 675, 679 (Tenn. Ct. App. 1998). Next, the marital property is to be divided in an equitable manner. *Id.* As part of this process, the trial court should also identify and allocate the parties' separate and marital debts. *Id.* (citing *Herrera v. Herrera*, 944 S.W.2d 379, 389 (Tenn. Ct. App. 1996); *Hanover v. Hanover*, 775 S.W.2d 612, 614 (Tenn. Ct. App. 1989)). Moreover, we are mindful of the well-

⁸(...continued)

Review” section of his brief, *see* Tenn. R. App. P. 27(a)(4), accompanied by appropriate argument and citation to the record and relevant authority, *see id.* at (a)(7), we decline to consider his request. By way of *dicta*, we note that Wife has no funds from which such an award could be paid even if the issue had been properly presented.

established precedent that, “in cases involving a marriage of relatively short duration, it is appropriate to divide the property in a way that, as nearly as possible, places the parties in the same position they would have been in had the marriage never taken place.” *Batson v. Batson*, 769 S.W.2d at 869.

C.

We begin with Husband’s retirement account, by far the most significant asset at issue. At the time of the marriage, Husband had a TVA/Fidelity 401(k) with a vested balance of \$10,845.56 and a TVA Retirement System Variable Fund with a vested balance of \$56,782.13⁹ When Husband changed jobs, he rolled his retirement fund into his 401(k) account. Thus, the value of the combined retirement accounts was \$67,627.69 at the time of marriage, and \$199,541.96 at the time of the divorce. In addition, during the separation, Husband took out a \$4,431 loan against his 401(k) without Wife’s knowledge.

Marital property includes “the value of vested and unvested pension, vested and unvested stock option rights, retirement or other fringe benefit rights relating to employment that *accrued during the period of the marriage*.” Tenn. Code Ann. § 36-4-121(b)(1)(B) (2005) (emphasis added). To determine the marital portion of Husband’s retirement fund in the present case, the trial court took into account Husband’s 22 years of contributions, 17 of which preceded the marriage and 5 of which occurred during the marriage. It did so by applying an “equitable coverture fraction” by which it multiplied the value of the account at the time of the divorce (\$199,541.96) by a fraction representing the years of the marriage over the years of Husband’s contributions, *i.e.*, 5/22. By this method, the trial court determined that the marital portion of the retirement account was \$45,350.44, while the remainder of the account was Husband’s separate property.

The choice of valuation method is a discretionary one for the trial court that depends on the facts of the case. *Kendrick v. Kendrick*, 902 S.W.2d 918, 928 (Tenn. Ct. App. 1994). Moreover, “fairness is promoted by using valuation and distribution procedures that are straightforward and easily applied.” *Id.* at 929. Our review reflects that the trial court properly classified the separate and marital property with respect to the 401(k). After awarding Husband his separate property, the trial court awarded each party 50% of the marital portion, or \$22,675.22 each. Wife’s position that the marital portion of the retirement is determined simply by subtracting the account balance at the time of the marriage from the account balance at the time of the divorce is simply untenable. Tenn. Code Ann. § 36-4-121(b)(1)(B) “does not permit the conclusion that *any* increase in value [of separate property] during marriage constitutes marital property. The increase in value constitutes marital property only when the spouse has substantially contributed to its preservation and appreciation.” *Harrison v. Harrison*, 12 S.W.2d 124, 127 (Tenn. 1995) (emphasis added). In this case, there was nothing to show that the increased value of Husband’s separate portion of the account was anything other than market-driven. Accordingly, the trial court properly distributed the funds based on the value of the marital portion of the account, not the entire account balance.

⁹ As previously noted, Husband had the retirement annuity since he was hired in 1985 and opened the 401(k) in 1997.

Next, of the \$33,000 in proceeds from the sale of the marital home, all but “several hundred dollars” was applied, as ordered, to pay off the balance of Wife’s South College student loans – \$32,783.48. There is no dispute that the loans were marital debt. Husband states in his brief that the loans were “a marital debt[] which should [be], and indeed was[,] divided equally” As can be seen, however, the trial court found that Wife “should be responsible for the entirety of her student loan[s],” and this was the effect of its property division. Stated differently, Wife was made wholly responsible for this debt when \$16,391.74, representing half of the student loan debt, was deducted from her “side” after it had already been paid with each party’s share of the house proceeds.

Next, the trial court awarded Wife the Toyota 4Runner, but ordered her to repay Husband one-half of the value the court assigned, *i.e.*, \$4,750. Again, the parties do not dispute that this vehicle was marital property and Wife concedes it was within the trial court’s discretion to order her to pay Husband half its purchase price. She argues, however, that the trial court failed to account for \$2,503.17 in cosmetic damages the vehicle sustained while in Husband’s possession. Although the trial court and parties inspected the vehicle during the hearing, and Husband conceded that he returned the vehicle to Wife with damage, there was no testimony regarding the cost to restore the vehicle to its pre-accident condition. As a result, there was no basis by which the trial court could have adjusted the value.

Lastly, the trial court ordered Wife to pay for various items of furnishings and personal property removed from the marital home during the separation. The trial court found:

[Wife] purloined various items belonging to [Husband] after breaking into the marital home on or about April 13, 2007. [Husband] does not seek the return of any of these items due to his concerns about their condition and cleanliness. [Husband] is entitled to a sum in the amount of \$6,181.82 as compensation for the value of these various items of property

At the trial, Husband testified to the description of the various items, when they were acquired and his estimation of their value. As to these items, the trial court expressly found that they belonged to Husband and he was therefore entitled to \$6,181.82 in compensation for their “loss.” Upon review, we cannot agree. Even considering only the estimates that Husband provided, we do not reach the figure that the trial court used. We conclude that the evidence preponderates against the trial court’s finding with regard to the valuation of this property. Husband testified to a total value of \$5,652 and this is the figure we will use. To the extent that the trial court used the \$6,181.82 figure instead of \$5,652, we modify the judgment to use the latter figure.

D.

The final distribution of the marital property and debt can be demonstrated by the following schedule:

<u>Description</u>	<u>Husband</u>	<u>Wife</u>
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1. Balance of \$33,000 net proceeds from sale of marital residence after South College student loans were paid (balance paid to Wife as pendente lite alimony)		\$ 216.52 ¹⁰
2. Marital portion of retirement funds	\$22,675.22	22,675.22
3. Toyota 4Runner		9,500.00
4. Wife must pay Husband half of value of 4Runner	4,750.00	<4,750.00>
5. Property of Husband moved from House		5,652.00
6. Wife must pay Husband for Item 5	5,652.00	<5,652.00>
7. Wife responsible for South College loans (Trial court held that 100% of these loans were to be chargeable to Wife. This decree requires that Husband receive a credit from Wife for half of the total loans that were paid out of the net proceeds from the sale of the marital residence.)	<u>16,391.74</u>	<u><16,391.74></u>
	<u>\$49,468.96</u>	<u>\$ 11,250.00</u>

Because the total of the three credits to Husband's column, *i.e.*, \$26,793.74 (\$4,750 + \$5,652 + \$16,391.74) were more than Wife's share of the retirement funds, her share being \$22,675.22, Husband received the entirety of the marital portion of the retirement funds, that portion being, *in toto*, \$45,350.44, and Wife must pay Husband \$4,118.52,¹¹ for a total to him, as seen by the schedule, of \$49,468.96. Wife gets all that was left of the net proceeds from the sale of the marital residence, being the \$216.52 alimony pendente lite award; a 4Runner valued at \$9,500; and the \$5,652 of value of property she wrongfully took from the parties' house, less the \$4,118.52 due Husband, for a net award, again per the schedule, of \$11,250. In addition, Wife's student loan debt – which, as it turns out by virtue of this divorce, was solely for her benefit – has been paid to the “tune” of \$32,783.48. In terms of true value, Wife received, *and got the benefit of*, \$44,033.48¹² and Husband received \$49,468.96.

¹⁰This figure represents the difference between the reported net proceeds of \$33,000 and the total loans of \$32,783.48. During the testimony, Husband stated that Wife received \$853 and in Husband's brief the amount is reflected as \$831. Because these discrepancies are relatively insignificant, we ignore them.

¹¹This is the amount by which the total credits due Husband exceeded Wife's share of the retirement funds.

¹²This figure does not include Wife's use of 300 to 400 \$1 coins, which were Husband's separate property.

The evidence does not preponderate against the equity of the trial court's division of the marital property and debt.¹³ There is no abuse of discretion in the trial court's decision.

V.

In her second and third issues, Wife challenges the trial court's holding that she was not entitled to any form of alimony. She concludes that the present case is "tailor-made" for an award of rehabilitative alimony. In denying her request for spousal support, the trial court stated:

[Wife] is not a candidate for the award of any alimony in view of the short duration of the marriage, her failure to contribute significantly or at all towards the marital estate, her failure to improve her position in the open job market, and her high level of education, which is greater than that of [Husband]. [Wife] has failed to show a need for alimony necessitating an inquiry into [Husband's] ability to pay.

[Wife] failed to produce evidence of a need for alimony in any shape or form. [Wife] has failed to show a need to satisfy any of the criteria for the award of alimony and the Court specifically finds that no alimony shall be awarded to her.

Spousal support decisions hinge on the unique facts of a case and require a careful balancing of the factors in Tenn. Code Ann. § 36-5-121(i)(1)-(12). The Rogers' marriage was one of relatively short duration. *See* Tenn. Code Ann. § 36-5-121(i)(3). Wife has a master's degree in rehabilitation counseling and had an unspecified amount of course work toward a nursing degree while Husband only had an associate degree in mechanical engineering. *See id.* at (i)(1) and (i)(2). Each of the parties had a history of medical problems. *See id.* at (i)(5). Husband had substantial separate property. *See id.* at (i)(7). As has been shown, the marital assets and debts were distributed in a way that Wife received, or got the benefit of, \$44,033.48 and Husband received \$49,468.96. *See id.* at (i)(8). The court found – and the preponderance of the evidence is not to the contrary – that Wife had wasted money in starting, and not finishing, educational pursuits. *See id.* at (i)(12). Furthermore, the trial court found, again not contrary to the weight of the evidence, that Wife "fail[ed] to contribute significantly or at all toward[] the marital estate." *See id.* at (i)(10).

The trial court found that Wife did not "show a need for alimony."¹⁴ While the evidence preponderates against this finding – given Wife's status at the time of the divorce – we do not believe that our disagreement on the issue of need affects the validity of the trial court's ultimate judgment on the issue of alimony. This is because, when all of the relevant factors are considered,

¹³The trial court does not appear to have specifically addressed Wife's non-South College student loans other than to decree that each party would be responsible for that party's individual debts. Apparently, Husband did not co-sign for these other student loans, which Wife has deferred and hopes a future employer will pay.

¹⁴The record reflects that Wife's monetary needs, at least at the time of the divorce, were being met by her boyfriend and her father. Wife testified that she was obligated to repay them for their assistance.

the evidence does not preponderate against the trial court's decision not to award Wife any alimony, including attorney's fees. The entirety of the record militates against alimony in any form.

VI.

The judgment of the trial court, as modified by this opinion, is affirmed. Costs on appeal are taxed to Mary K. Rogers. This case is remanded to the trial court, pursuant to applicable law, for enforcement of the trial court's judgment and for the collection of costs assessed below.

CHARLES D. SUSANO, JR., JUDGE